

# **Women and Land Rights in Maharashtra**

**Exploring the facilitating and constraining factors in  
achieving resource rights**

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# Chapter 1

## Women and Land rights in Maharashtra

### A little by way of introduction

Society for Promoting Participative Ecosystem Management, SOPPECOM for short, is a support organisation with long standing experience of work in the area of natural resource management. The organization has primarily worked on the question of water- access, rights, equitable distribution and rational and sustainable use.

None of us who are involved in the present desk study are lawyers but for our own understanding have had a detailed discussion with Dr, Jaya Sagade and Lakshmi Paranjape of the ILS College, Pune. SOPPECOM is a mix of people coming from both technical backgrounds as well as social science backgrounds. It is also a mix of people who have worked or have been closely associated for several years with social movements working within a framework of class, caste and gender equity. It is from this location that we feel qualified to comment on such an important theme of women and land rights. Some of us have been closely associated with the women's movement and have been actively involved in asserting housing land rights of single and deserted women who we now refer to as the *Ektya Vanchit*<sup>1</sup>. These struggles are pointers to the innumerable dimensions of the problem and the levels at which we need to wage the struggle. Success in these struggles also provides us lessons for leading the campaigns in future.

This multilocal background also forces us to look 'beyond land alone' approach. In our report therefore while we do take stock of rights over material assets of land, water, credit and skills, we have also looked at the procedural aspects of rule making and allocation of resources where institutions come in. This is because the question of women and land rights needs to be understood in all its dimensions, if a campaign has to be successful. This involves a deeper theoretical analysis of the legal spaces which perhaps needs more time and expertise as we need to see the implications of different laws which impinge upon the personal laws. While doing this desk study we realised that the question is not merely of social and cultural constraints or legal and administrative constraints but a combination of all these and often one shaping the other.

This perhaps would mean that we look at the question beyond ownership of land to access and management as collectives or as individuals.

With this modest understanding we approach the problem of women and land rights, basically drawing on our discussions with lawyers, friends from the women's movements, documents very graciously provided by IGSSS and our very own experiences as feminist researchers and activists.

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<sup>1</sup> Ektya vanchit is a broader and more inclusive category that includes, unmarried,, divorced, deserted, and widowed women,, sex workers and those women with different sexual preferences. This term was coined recently in a workshop in Pune hosted by several women's organisations in Maharashtra

We do hope that some of the issues raised in the report would be relevant for chalking out our broader campaigns and more importantly, the intense preparatory work in terms of studies and strategies that need to go in before a campaign is formally launched.

## **Background, rationale and objectives**

The study took off with a request from the IGSSS, Pune office to try and understand the women and land rights question in the state of Maharashtra. It is located in the broader initiative that IGSSS hopes to launch at the national level in the context of women and land rights.

This study is therefore aimed at understanding the possibilities of initiating a state level campaign on women and land rights question. To do so it would be important to understand both the legal and the social spaces that women have access to before launching a grassroots movement or campaign. The study therefore set out with the specific objective to explore these spaces, the constraints and the facilitating factors.

In our initial meeting with the IGSSS we had stated our broader position on land rights in general and specifically in the context of women, whereby our thrust would be more on a need for a basket of rights which include access to water, knowledge, credit and institutions. We strongly advocate for this broader view because in terms of daily experiences and activities, and when it comes to real empowerment just catering to one right may not change much in real terms for a lot of women. As we will see later on all these rights and access to these different resources are tied to each other. And in the absence of one or the other the rest of them stand nullified. We had also indicated that it might be critical at this juncture when land ownership is fast receding, to look at alternate approaches to ownership such as access and control over land either as individuals or collectives. Hence even the notion of empowering with rights needs to be reconsidered and approached with alternative models- all this to make empowerment and rights truly accessible and meaningful.

## **Process of information gathering**

Since this study spanned over a short time period, it had to be more of a desk study with a few inputs from some of our friends from the women's movement and from the legal background. Our main sources of information were the discussions which we had with Jaya Sagade and Laxmi Paranjape, with women's movement activists; our own studies done in the past on the question of single and deserted women and their access to land and other productive resources; direct learnings from struggles of deserted women in demanding right to land; importantly of course reading of the material shared by the IGSSS of studies done in the State of Gujarat and a few documents of the Consult for Land rights.

## **Limitations**

In the following pages we would see the limitations we confronted while undertaking this study in details a small preface to the same is well in place. Though the canvas is very wide and through our discussions with legal experts and with a few women activists we realized that a short one month desk study cannot really capture all the dimensions of this question and we need a longer period to research into the question alongside of the launch of the campaign. Secondly

even though some state level work has been done we still have very little literature by way of analysis on the question of women's land rights. Even in terms of land and agrarian movement and the role of women therein is the scope for a very few researches and researchers. Leaving much to be said and thus also making this study an essential effort to fulfill this lacuna.

Given these limitations therefore we have set out with very primary and modest goals where we have tried to highlight some of the broad areas which need to be addressed for a successful launch of a campaign. These include the kind of studies that need to be done, the kind of strategies that need to be taken up and the role of different kinds of organization in such a campaign. While simultaneously using and analyzing the available literature in the field.

## **Organisation of the report**

The report is organised into three chapters, the first chapter which is the present one discusses the objectives, rationale and the methodology of the study, the socio-cultural context and the spaces that are present for women to assert their rights over land and other resources. Here we primarily discuss the overall social, political and cultural scenario of the State and importantly how fertile a ground it is for launching a struggle such as this. The second chapter focuses on the legal spaces and constraints around land rights with a section on specific recommendations for legal amendments. The third chapter is the final chapter which gives a set of overall recommendations for the campaign to take off in the state of Maharashtra. In this same chapter we have a section on the support groups comprising of women's organizations, academics, lawyers, individuals and other human rights organisations which would help in the launch of this struggle.

## **Socio-cultural and political context of Maharashtra scenario**

Maharashtra is considered as one of the most prosperous states of the country with one of the highest per capita incomes. Despite these statistics, the state has 25% of its population below poverty line (Planning commission- 1999-2000). It has a sex ratio of 922. The recent NSSO data shows that 11% of the households are headed by females. Census data also shows an increasing numbers of widows with little or no access to any resources and yet large burdens to carry.

If we look at the macro data of the state with reference to land holding we see a fairly bleak picture. For instance, the 48<sup>th</sup> and 59<sup>th</sup> round of NSSO shows for Maharashtra that the proportion of households that do not own any land including homestead plots is 17.66%. If we consider households without any operational holdings or agricultural lands it is about 44.7% and 38.2% of the households fall in the category of non ownership of agricultural land and non cultivation of homestead land (Rawal, 2008).

The table below is indicative of a decline in the operational land holdings of the households. The data is on a time series basis from the 1970's to mid 1990s. It shows that landholdings in the class below 0.5ha are increasing and there is a steady decline in holdings in the category above 3ha. The average land holding too is seeing a steady decline from 4ha in the 70's to 1.8ha in the 90's. This is indicative of fragmentation of land. We also see that the in the higher up categories the number of households are going down but there is a subsequent rise in the average land holding of a household thereby indicating concentration of large landholdings in the hands of a few.

**Table 1: Total number, area and average size of operational holdings in Maharashtra according to agricultural censuses**

Size class (ha)	Number of operational holdings in hundred				Area of operational holding (hundred ha)				Average size of holdings (ha)			
	1970-71	1980-81	1990-91	1995-96	1970-71	1980-81	1990-91	1995-96	1970-71	1980-81	1990-91	1995-96
Below 0.5	6,834	9,914	16,672	22,409	1,634	2,630	4,119	5,746	0.24	0.27	0.25	0.26
0.5-1.0	5,585	9,345	16,075	20,252	4,142	7,103	12,057	15,120	0.74	0.76	0.75	0.75
1.0-2.0	8,783	15,409	27,276	31,755	12,842	23,337	39,833	46,059	1.46	1.51	1.46	1.45
2.0-3.0	6,266	10,275	13,969	14,745	15,386	25,363	33,689	35,420	2.46	2.47	2.41	2.40
3.0-4.0	4,606	6,583	7,289	6,774	15,920	22,815	25,108	23,303	3.46	3.47	3.44	3.44
4.0-5.0	3,576	4,601	4,469	3,874	15,961	20,556	19,864	17,210	4.46	4.47	4.44	4.44
5.0-10.0	8,715	9,316	7,241	5,558	61,213	63,937	48,700	37,150	7.02	6.86	6.73	6.68
10-20	4,180	2,819	1,530	1,029	56,302	37,213	19,749	13,514	13.47	13.20	12.91	13.13
20 and above	961	363	176	132	28,394	10,662	6,129	5,274	29.55	29.37	34.82	39.95
Total	49,506	68,625	94,697	1,06,528	2,11,794	2,13,616	2,09,248	1,98,796	4.28	3.11	2.21	1.87

**Source: Commissionerate of Agriculture, Maharashtra State, Pune**

To understand the present land use pattern in Maharashtra see Annexure 1 Table A. This indicates the shifts in land use since the mid eighties to the present. One of the features that we need to note here is that the current fallows and other fallows show a gradual increase but there is a decline in forest areas. If we look at data on net area sown we see a decline from the 80's to now. It used to be about 183,000 ha and the 2006-07 survey shows this figure close to 175,000 ha, a difference of 8000ha. Land under non-agricultural use is also going up rapidly thereby indicating lower availability of land for agricultural use. This is indicative of urbanization and industrialization often to be interpreted as land of the poor going into the hands of the urban and peri-urban rich.

**Table 2: Economic classification of workers as per Census 2001**

Workers	Maharashtra			India			
		Males	Females	Total	Males	Females	Total
Cultivator	Main	6,181	4,001	10,182	78,259	25,367	1,03,626
	Marginal	500	1,132	1,632	7,158	16,529	23,687
	Total	6,681	5,133	11,813	85,416	41,896	1,27,313
Agricultural labourer	Main	3,942	3,700	7,641	41,119	22,378	63,497
	Marginal	982	2,192	3,174	16,210	27,068	43,278
	Total	4,924	5,891	10,815	57,329	49,446	1,06,775

**Source-** i) Registrar General and Census Commissioner, Government of India, New Delhi

ii) Director of Census Operations, Maharashtra, Mumbai

Table 2 shows the economic classification of workers and here we can compare the percentage of women cultivators to men. Of the total number of Main cultivators in Maharashtra 39% are women and 61% are men. Assuming that some of the cultivator women may also be owners of that land we still have a very small percentage of women land owners. At the India level this figure goes down to 24%.

If we look at the agricultural labourers though we find that the picture is different.

## Historical overview

In this section we take a quick overview of the land rights movement in the state of Maharashtra. To contextualize this history let us take a stock of what happened at the national level. If we look at our first five year plan we see that the ambience was generally in favour of land reforms. This of course had its roots in the peasant uprisings in pre-independence India, notably in the Telengana region of Andhra Pradesh and the Tebhaga region of West Bengal. An important change as a result of these peasant movements was the abolition of the zamindari system through an Act. However from the 1960's onwards land reforms were almost completely wiped out from India's development agenda. With the food crisis of the 1960's the entire focus of the nation was on the green revolution package which was introduced to overcome the crisis. This led to rural unrest in different parts of the country. From then on the land reform movements have only picked up in certain areas, but it has been largely abandoned by the Government from its rural development agenda.

From the historical perspective most women narratives and their role in peasant movements is culled from the wider discourse on peasant movements in India. Now the term peasant or agrarian movement as a blanket term refers to all kinds of collective attempts of different strata of the peasantry to either change the system which, they felt, was exploitative, or to seek redress for particular grievances without necessarily aiming at overthrowing the system. These terms therefore refer to all kinds of resistance movements, violent or non-violent, organized or spasmodic, pre-political or political (Dhanagare, 1983).

The *Tebhaga* movement in Bengal in the mid forties was a struggle by sharecroppers to retain a two thirds share of the produce for themselves and thereby reduce the rent they paid to *jotedars*-class of rich farmers who held superior rights in land-from one-half to one-third of their produce.



The movement was launched at a crucial juncture on the eve of India's independence and partition of the subcontinents.

The aim of recalling these examples are twofold: one to trace the historical traces of land rights movements in India through some landmark cases and secondly identify the key elements therein and of the research on these cases. This will help us to build our own strategies while sensitizing us to the common pitfalls and positive contributions of these cases. In sociology and also in the rest of the social science discourse there is a well-entrenched tradition of analyzing socio-political-movements- including peasant movements-in a 'class' framework rooted in Marxism. A general question that is often raised concerns the role of different agrarian classes play in peasant resistance and revolts. The fact that Marxism has been a dominant ideology in much of the social sciences practiced in India and the world over has meant that class consciousness has dominated other kinds of consciousness on the part of researchers and writers. Like for instance when Teodor Shanin drew the characteristics of the peasantry where he outlined the following: "relationship to land and relative stability of the peasant household:, "family farm as a production-consumption unit" " use of family labour (mainly)", etc—this was still seen and read in terms of the description of a certain class. The repeated usage of family resources and labor didn't lead one to think of the role women were playing in the whole process. In peasant, land and agrarian studies women who form an integral part of the whole process from start to finish are nonetheless relegated not to the background but as oblivious. In fact the very two struggles that we discussed above had strong women as their cadre members who worked in organized units, who were shown (if they were) to have been working in the foreground, thus they never got mentioned at least not until their history was rewritten. This documentation showed that women were indeed at the forefront of the struggle, but in fact there was very little in terms of material gains that they could achieve.

Some of the dynamic women in the Tebhaga struggle were those who were active in the quit India movement of the 1942 and had now joined the newly formed communist part of India. Rani Mitra Dasgupta, Manikuntala Sen, Renu Chakravarty and other women who were active volunteers of the Mahila Atmaraksha Samiti (Women`s Self-Defense League) (MARS) during the famine crisis of 1943-4 , presided the rustic women`s movement. Although the male agitators were not that much willing to have females as co-protesters, yet they joined hands to accomplish in their mission. Initially, the role played by women was as subordinate assistants to men. They cultivated the crops for maturing into harvest, prepared food for the leaders, functioned as vigilant, and creating sounds of alarm, to caution the fellow-members, when there were potential threats of risks. But women came to the forefront once there was an armed battle with the state and the men were caught unawares. Although their role was so prominent one hardly hears of their struggles and one hardly finds any gains for women directly. Land was not in their name, in fact there was no such demand either. Women, who were empowered by the whole process of participation, unfortunately had to recede into the background once the victories were won or even when the battles were lost.

It was only much later under the leadership of the Chatra Yuva Sangharsh Vahini active in the 70's that we see a keen interest in women and land rights. The Bodhgaya struggle in Bihar has been widely written about and it is the only struggle at a scale perhaps which articulated the

concerns of women's ownership to land. We do not see many examples of this kind following the success of this struggle in Bodhgaya.

## **Resource rights struggles in Maharashtra**

Maharashtra has a long social and cultural history with leaders such as Mahtama Phule, Savitri bai Phule, Pandita Ramabai, Dr, Babasaheb Ambedkar and others who led critical movements against exploitation of lower castes and women. Here we try to mention a few struggles which in a way are markers for the land rights struggle in the state. We must say that this is not an exhaustive listing or history of the movements as it is not the scope of this paper, however it provides a window into the land rights struggles in Maharashtra that do create a fertile ground for the launching of the women's land rights campaign.

In Maharashtra there have been revolts by the tribals around land rights notably in Khandesh area where the *Shramik Sanghatana*, Shahade was actively fighting against the land consolidation efforts of the Gujjar community in Dhule district. The struggle was launched after an incident in the early 1970's when a group of tribals approached one of the Gujjar landlords in Dhule district and demanded grains by asking them to open their granaries. High prices along with drought of 1970-71 had forced them to starvation. Instead the landlords used their private army to open fire on them killing one and injuring many. This incident pushed the local activist Ambar Singh<sup>2</sup> to organize a campaign of *bhoomi mukti* (liberation of land), which started with a conference on 30<sup>th</sup> January 1972. This conference attracted many left oriented activists from the cities of Bombay and Pune, including those associated with an independent left organization called Magowa. This was a small group of engineers and other professionals from IIT Mumbai and other cities as well. They joined the struggle against land alienation and drought relief under the leadership of Ambar Singh and formed what is now known as the Shramik Sanghatana.

The other area is Thane district of Maharashtra under the able leadership of *Shoshit Jan Andolan* and earlier struggle led by Dadasaheb Gaikwad for land rights of the dalits.

The tribal land rights movements in Thane have largely been fighting for regularization of encroached lands.

Many of the organisations working in the tribal belts of Thane and Raigad districts of Maharashtra started work from 1975-76. Together they all formed a Jabran Jot andolan kriti Samiti in 1978-79. Because of this pressure, the government of Maharashtra in 1978 issued an order to the effect that all the lands encroached as on 31<sup>st</sup> march 1978 be regularized. This was a major victory of the andolan. The immediate outcome of this was to also demand that similar lands like the Eksali plots (one year contractual plots), forest plots, dali lands (so called fallows) and cases of land transfers too should be regularized. Pressure was put on the State through a series of *shibirs* and *morchas* and also filing in of individual and collective cases of such lands.

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<sup>2</sup> Ambar Singh, an educated tribal leader was associated with the Sarvodaya Mandals. In 1969 he formed the Adivasi Sewa Mandal after being disillusioned with the narrow vision of the Sarvodaya Mandal. The Sarvodaya ideology did not address the issues of landlessness, land alienation and indebtedness among tribals (Brahme and Upadhaya 1979, 2004).

In 1986 the *Jabran Jot Samiti* and the *Bhumihin Shetkari Andolan* in Marathawada merged to form the Maharashtra *Kashtakari Andolan Samiti* in a historic meeting in Mumbai. From then on there were a series of meetings across Maharashtra to work on the issue of land rights for adivasis, dalits, nomads etc. This samiti was later, in 1986, in a Pune meeting was to undergo a change in name to include all the toilers and hence was called the *Shoshit Jan Andolan*. The Andolan is still known by the same name and is a large network of various organizations largely working in the tribal belt of Maharashtra. Although regularization of tribal lands is their concern there seems to be little in their documents, which talks of women's rights over land. A few of the organisations such as *Jagrut Kashtakari Sanghatana* etc are now also seriously pursuing the women and land rights agenda in their areas.

The other important struggles around displacement were of course led by the now historic *Narmada Bachao Andolan*. The Andolan under the leadership of Medha Patkar for the first time challenged the process of consolidation of state and corporate power through dispossession of the farmers. It drew away the World Bank from the country and has consistently led the struggle against mega developmental projects. The National Alliance of Peoples Movements (NAPM) was then formed under the leadership of Medha Patkar and this alliance spread through the country and consistently raised its voice against all such so called development projects which were dispossessing people mainly the tribals of their lands. The Alliance is now waging a struggle against the various SEZ's that are coming up in the country.

In 1989 the "*Laxmi mukti*" campaign developed within the *Shetkari Sanghatana* a farmers organisation led by Sharad Joshi. This grew out of an initiative of women in the village of Vitner in the then Dhule district, where an all-woman panchayat had been elected. The Vitner men and women of the Sanghatana took the important step of putting half the family land in the name of the women of the family. These were wives and daughters-in-law: it was assumed that the daughters would get land in the families they had married into, and as with all farmers, they did not want the land owned by people outside the village. (This is a major problem; one of the objections to the Maharashtra government's policy of giving land through inheritance rights to women is that the husbands of the married daughters inheriting the land are simply using the clause to grab the rights). The movement was then taken up as a campaign of the Sanghatana as a whole and named "Laxmi Mukti": women, considered the wealth of "laxmi" of the household, were actually being deprived of their rights). In a series of tours, in which women activists such as Madhu Kishwar participated along with Sanghatana leader Sharad Joshi, Laxmi Mukti was carried out in numerous villages throughout the state.

Later women of the Shetkari Sanghatana Mahila Aghadi did a number of informal surveys to see the results of the campaign, and all agreed it had resulted in some empowerment of women.

Often there was a problem of getting the land registration changed. Obstacles were brought by government officials, often on the groups that with smaller holdings (below five acres) this would result in unacceptable "fragmentation" of holdings.

With the decline of the Sanghatana in the 1990s and later the campaign has been more or less halted (contribution from Gail Omvedt, senior Sociologist who was closely associated with the Shetkari Sanghatana and particularly the Laxmi Mukti campaign).

In Marathawada region of Maharashtra, where almost 20% of the population is that of dalits who also happen to be landless, we find a similar struggle going on. Here we see a large number of

NGOs who seem to be involved in the campaign, under the banner of *Jamin Adhikar Andolan*, led by Eknath Avhad. Among those who do need mention are groups like *Paryaya and Janseva Mandal*. Both these organisations have been following up on the land regularization process. They have also been insisting on land in the joint names of men and women. There are several hurdles that they have encountered, but the process is on. The organisations have also done a detailed survey of a large tract of gairan land in the Marathawada region to understand the potential of the land to meet the livelihood needs of the dalit population (Paryay 2004).

The other notable effort in Maharashtra has been the one led by Vaishali Patil of the Adivasi Hakk Suraksha Sanghatana in Raigad district of Maharashtra. Raigad district of Maharashtra has a dominant population of the Katkari tribe which is about 11%. Of these only 4% have land in their names. Low levels of literacy and poverty combine to push the community to the margins thereby forcing them to migrate in search of work.

Like most tribal areas, Raigad is also rich in natural resources and therefore has attracted the attention of several business enterprises. Its proximity to Mumbai and Pune adds to its value. At present it has become the centre of State attention that has proposed some 12 Special Economic Zones.

The struggle for homestead plots for tribal women therefore needs to be seen in this context. Here the Adivasi Hakk Suraksha Sanstha fought on the basis of a Government notification issued on the 20th May 2000. This notification is under the tenancy act- Article 17 B (2) which grants homestead land rights to its residents. The notification says that the families of agricultural laborers, artisans etc. living on a land for years can get the land title in their name provided they produce necessary documents, such as receipt of housing tax etc. Using this notification the Sanghatana took the lead and got this process initiated. But here the woman activist Vaishali Patil saw that the mindsets of the karyakartas who were professional social workers had not really changed and they applied for homestead titles in the name of men. She then conducted a series of exercises through which she convinced the men that home should be in the name of women. Here she prodded the men to think by asking them questions like who makes the hut into a home, who does the flooring work, who cleans it etc. For all these questions the men answered 'women' and that led to a historical decision of making the homestead plots in the name of women.

On 3rd January, on the occasion of Savitribai Phule Jayanti, 100 applications claiming rights of women were submitted before the executive magistrate. After consistent follow-up with concerned departments and sit-ins to pressurize action the claims were declared approved on 8th March, the International Women's Day. After this first victory the organisation has developed a system whereby they submit applications frequently, especially before all important public gatherings that they organize. How the benefits of this provision can be extended to all 76 Lakh landless laborers and artisans in the state is a real challenge.

At another level we also have struggle of the nomadic and denotified tribes under the leadership of Mr Balkrishna Renke who is now the Chairman of the Commission on Nomadic and Denotified tribes. This movement has been demanding a home of their own and also small plots of at least 10 cents in their name with access to water and credit.

There are women's movements like those fighting for the rights of single women, deserted and widowed who have been demanding housing and agricultural lands for these women and also

fighting for legal aid for widows to stake claim on their husbands' property. Prominent among them is the Stree Mukti Sangharsh Chalwal<sup>3</sup> in western Maharashtra where single and deserted women from five villages have gained rights over 1500 sqft of housing land each.

There are also important initiatives that need to be recognized such as those led by Masum<sup>4</sup> in Pune district where they have implemented the Government Resolution of the Maharashtra Government called '*ghar doghanche*'.

The other set of important initiatives which need to be understood are with reference to sustainable use of the resource. In Maharashtra these were led by the *Prayog Parivar* group under the leadership of S.A. Dabholkar. These were experiments, which proved that small plots of 10 cents could go a long way in meeting livelihood needs of a family of five, if used in an optimal manner. He stressed the need for a transition to a low external input agriculture, which he said, could go a long way in attaining sustainable prosperity for all.

The other set of struggles and initiatives are around equitable distribution and sustainable and rational use of water. Notable among these are the struggles of *Pani Panchayat* under the leadership of Vilasrao Salunke and Kalpanatai Salunkhe where for the first time the need for delinking land rights from water rights was proposed. The main thrust was on equitable distribution of water. Later in South Maharashtra this idea was further developed and a large movement was launched by the *Shramik Mukti Dal*, a non party political group. This group launched the now famous Pani Sangharsh Chalwal in Southern Maharashtra where the main demand was that of equitable access to water on a per capita basis where women and the landless will have to be included. These struggles paved the way for linking the water rights movement to land rights. The movements led to some very important experiments around setting up of norms on what equitable access would mean and how water could be used rationally. These experiments primarily initiated by CASAD<sup>5</sup> and SOPPECOM in the late 1980s have shown that water is a critical input in agriculture and an important means of production over which equitable rights need to be established independent of landholding. Other experiments followed in other parts of Maharashtra which linked women's access to water to collective access to land as well. These experiments provided interesting insights and paved the way for arguing for collective rights over a basket of resources. We shall discuss this experiment in a little more detail in a later section.

The point that is being made here is that though the various leaders have identified various vulnerable groups whose rights they need to fight for women/gender as a special category has evaded as organizational efforts. In spite of the fact, as seen through some representative efforts, that the case for women is a viable one—both from the individual women's right perspective and also from the community's perspective. As various field studies have shown that the empowering of women through titles and holdings has meant increase in efficiency level and efficient use of

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<sup>3</sup> Stree Mukti Sangharsh Chalwal a women's movement works in the Sangli Satara and Kolhapur districts of Western Maharashtra. Its main area of work has been raising the voices of single and deserted women.

<sup>4</sup> Mahila Sarvangin Utkarsh Mandal or MASUM an NGO works in Purandar tehsil of Pune district on issues of women's empowerment.

<sup>5</sup> Centre for Applied Systems Analysis in Development is a group of pro-people technologists and their main aim has been to see the role of technology for the poor. Prominent among the group are people like K R Datye.

resources. Thus there is a fertile ground for the women and resource rights campaign in Maharashtra, which could build on some of these past and ongoing initiatives.

## **Women and land rights in Maharashtra**

Very little research has been done on the extent of women's land ownership in Maharashtra. Here we would quote some of our own studies done in different contexts but where we had an opportunity to look at women's land ownership at the household level. In one of the earlier studies done in Sangli district in 2005 with 150 deserted and widowed women we found the following data (SOPPECOM, TISS, SMS, 2005)

The house ownership data for 143 deserted and widowed women who were surveyed shows that 77% women did not have a house in their name. The unusually high 23% of women who said they did own land are the ones who got this land after being associated with the struggle led by Stree Mukti Sangharsh Chalwal.

**Table 3: Marital status wise house ownership**

Housing	Marital Status		Total
	Deserted	Widowed	
Encroached	6	3	9 (6.2)
Joint Family Owned	43	22	65 (45.4)
On Rent	13	15	28 (19.5)
Self Owned	22	12	34 (23.7)
No Information	4	3	7 (4.8)
Total women	88	55	143 (100)

In case of land ownership we see a rather dismal picture. 72% of the women do not own land nor do they belong to a land owning family. Of the remaining 18% we see that only 1 woman has 1 acre of land in her name all the others are only part of land owning families which together own about 62 acres of land.

Mangal Chouhan of Bahe village in Sangli district has been deserted for the last 20 years. She has 2 daughters who are married. When she was beaten up by her husband she came to her natal home and started living with her parents and brother. She was hopeful that her brother and her natal family would look after her till she is alive. However, she is not sure how her sister-in-law would treat her. She was ill-treated once by her sister-in-law over a very petty issue and her father was witness to that incident and that is when he decided to grant her a right over one acre of land till she is alive- what is referred to as the *hayat patra*. He did this but did not give her ownership, only to maintain good relations with his son and also to negotiate a better deal for his daughter after his death. We asked her what she really gains out of this one acre of land. She says she only toils over that land, gets two times meals in return and a saree in a year and as an when she needs help from her brother- nothing more!

Both these tables are indicative of lack of resource rights for women from the most vulnerable groups who carry the burden of running the household on a single income

We did a similar study in Daund taluka of Pune district but mainly to assess the extent of desertion in the taluka (WSC, SOPPECOM, Ongoing) Here we interviewed 254 deserted women. If we look at the land ownership of the natal and marital households of these women we see a large number of landless households.

In fact 51% of the women were married into landless households reflecting on the general level of landlessness in a prosperous area of Pune district. Of the remaining 124 women who did belong to the landed martial households we see that only 2 of the women were able to get some rights over land. The remaining 122 or 98% of the women have no access to their martial land.

**Table 4: Land ownership of marital family**

Land ownership	No. of women	Percentage
Landless	130	51.2
0 to 3 Acre	34	13.4
3 to 6 Acre	41	16.1
6 to 15 Acre	30	11.8
15 to 50 Acre	17	6.7
More than 50 Acre	2	0.8
Total	254	100

**Table 5: Land ownership of deserted women (acquired from marital family)**

Land acquired	No of women	Percentage
No	122	98.38
Yes	2	1.62
Total	124	100

**Table 6: Land ownership of natal family**

Land ownership	No. of women	Percentage
Landless	105	41.3
0 to 3 Acre	71	28.0
3 to 6 Acre	43	16.9
6 to 15 Acre	27	10.6
15 to 50 Acre	8	3.1
Total	254	100

The picture is not very different when it comes to the natal families either. Of these 254 women 105 which is 41% belong to landless families. The others are spread in the categories of 0-15 acres largely.

Among those who do belong to landed families if we see the proportion having land in their own names we find that only 6 women have land in their own name and most of these six have no brother to write off their share in the property.

**Table 7: Land ownership of deserted women (acquired from natal family)**

Land acquired	No of women	Percentage
No	143	95.97
Yes	6	4.03
Total	149	100



**Table 8: House ownership (deserted women- Daund)**

Self owned house	No. of women	Percentage
No	209	82.3
Yes	45	17.7
Total	254	100

If we look at the data for house ownership we find that only 17% of the women said that they have some part of the house in their name, the remaining were only living in their parent's houses or brothers houses. None of the women even knew that they had a right over their family homes or if they did they did not dare to claim any share as they only hoped to live in peace without offending their brothers while they were alive.

A similar study of deserted women was also done in Pune city and that too shows a very similar picture of house ownership among women.

**Table 9: House ownership (deserted women- Pune city)**

Self owned house	No of women	Percentage
No	184	84.40
Yes	34	15.60
Total	218	100

## **Women and water rights**

In another study that SOPPECOM is currently doing, we were looking at women's membership to Water Users Associations (SOPPECOM, Ongoing) Women can become members of WUAs only if they have land in their name. Invariably then membership to WUAs is largely male. Of the 34 WUAs that were studied the average membership of women to WUAs was not more than 11%. In some of the WUAs membership was as high as 27% but in many others it was lower than 5% (see annexure 1 Table B)

We did a further investigation to understand how even these 11% women had come to acquire land in their own names and we found the following main reasons for women owning land among the 41 women that we had done detailed interviews with. These women hardly knew the implications of land in their name. Although as owners of these lands they did not manage these lands as most of them came from large landholding families. As is evident from these reasons most of them had done this to get benefits from either some schemes or to escape the land ceiling act. Similar to the bahu-beti brigade found in the national parliament and the state level legislative assemblies!

**Table 10: Reported reasons for land ownership**

<b>Reason reported for land holding</b>	<b>No of women</b>
After husband's death	4
Because husband is in service	1
Because of land ceiling act	9
Husband wanted joint ownership	2
Newly bought	3
No response	9
Received from parents	3
Received from in laws	4
To get more shares in sugarcane factory	6
Total	41

## **Facilitating and constraining factors**

A combination of factors which have a social, legal and cultural dimension contribute to the women's lack of land ownership over land. When we aim to understand women and land ownership we need to look at different categories of women. Women who have been widowed and deserted; women who are from landless households both from the marital and natal households; women who come from landowning natal households but are from landless martial households or the other way round or those belonging to the landed households both in their natal and martial homes. In each of these cases the question of individual land entitlements would differ. In some places it would be the personal laws that would apply in certain others it would be the state government's orders or legislations that would apply. Each of these cases needs to have separate strategies worked out.

## **Rules of marriage- patrilocality and patrilineality**

One of the important reasons that restricts women's rights over land is the unequal rules of marriage. The woman has to relocate herself after her marriage and move to her husband's home. This relocation essentially dispossesses her of her rights to her natal household's property. She is a suspect in her new marital home until she establishes her '*patrivratya*' in every sense of the term- good wife, daughter-in-law, a good mother who bears a son and of course one who dies before her husband does. This normative woman already disqualifies the widow and the deserted and the one who does not bear a son. But even when women achieve the impossible they are considered as second class citizens, who forever remain an outsider, not of the same blood in the marital household and in her natal home a stranger who was a gift which has now been given away! From the day she is born she is assumed not to really belong there and therefore who does not qualify for the same rights as the 'real' members of the family do. Though we will see that law has tried to set this duality right, the fact that in real terms not many women –both in rural and urban areas, both educated and uneducated, do not demand them shows that these social norms have made deep socio-cultural and psychological inroads.

## **The widows, deserted and single women**

When we come to the social and cultural issues we need to distinguish between a) statutory law, customary law and the actual practice b) between the inheritance rights of widowed women as widows and daughters c) between self acquired property and between ancestral property d) between land and other property

Most groups follow customary practice. Widows with young sons are entrusted with trusteeship till their sons become adults b) widows with adult sons are entitled with maintenance by their sons and those without sons often forfeit whatever tenurial right they have in their marital village to return to live in their natal village.

Even when women do voice for their rights they are treated as deviants. For instance widows who filed cases against their inlaws are toughly dealt with. In a case study from Latur in Marathawada region of Maharashtra a widow who filed a case to stake her claim on the family land was physically abused by her brother-in-law for being the defiant widow. In another case in Pune district where we were involved in a water users group meeting a widow was alienated from her son so that the rights would not transfer to her. In many of the cases in Sangli district showed that most widows came back to their natal homes and refused to stay in their marital homes for fear of their lives. Often the widow is an unwanted entity and is treated in a manner that would force her back to her natal home. This is particularly true in landed households. If she is a labouring hand in a landless household then she is often encouraged to stay back, such is the nature of patriarchy that accommodates to suit the convenience of the system.

The nature of property rights, under customary law in different regions and among different groups, the compromises that are made between customary law and statutory law, the conditions under which women are able to claim their rights, the strategies used by others to deprive her of her rights and the steps needed to protect property rights of widows. The extent and manifestation of gender inequality vary among societies.

Deserted women are worse off. They neither belong to the marital homes nor to the natal homes. They do not have a legal status either. Often the plight of these women is such that they are the second or the third wives of their husbands and therefore in no position to claim a right over the property. Maintenance too is not an easy battle to fight for and often these women are left fending for themselves. It is in these kind of situations that the question of state taking on the responsibility for rehabilitating these women comes on. It is within this framework of state accountability primarily that movements such as Stree Mukti Sangharsh Chalwal or the Samajwadi Jan Parishad, made demands for housing and agricultural lands in the name of single and deserted women.

## **Women in marriage**

The question of the larger majority of women who are in marriages and who come from different communities, religions and caste and who are governed by different sets of rules, laws and practices is the toughest nut to crack. These are women who are striving to be that normative woman and in that framework really see no reason to make a separate demand for land or for that matter any other resources. The household is the unit and resources are mediated through the man or the head of the household. Independent titles over land are not the expressed need of the

women in these situations and although they may have interest in gaining a right over land they may not overtly demand this right. In fact in many a case they have relinquished this right simply to maintain good family relations.

Rules of inheritance, rule of residence determine access to property. Where these rules are less stringent women's access is better. The use or abuse of testamentary rules, pressure brought to bear on women to write away their lands in favour of their brothers or men to maintain good relations and women's circumstantial inability to control and cultivate land. In fact marriage is also invoked in a second sense to deny women –from different customs and religion- their right in the natal family. Marriage is the occasion when daughters are in principal given dowry—leave apart the fact that it is illegal—the terminology is changed it becomes gift to daughters on the auspicious occasion of marriage. This giving of gift is sited as a reason for not giving a share to daughters on the account that they were given their share—of course on mathematic calculation is carried out it is completely a normative statement stated as an empirical fact—and therefore a daughter does not and should not further demand anything out of the natal property.

### **Facilitating factors**

Just as there are factors that restrict women's rights there are also factors that have facilitated women's rights over land. The recent amendments in the Hindu Succession Act do provide a space for women, particularly daughters in the ancestral property. However a large part of the personal laws and customary laws are unjust to women and we shall be discussing some issues in the next chapter.

The other reasons why land was transferred in the names of women have been compulsions arising out of land ceiling and fragmentation acts. Although one may not consider these as very progressive outcomes, they nonetheless have allowed women this right.

The other set of facilitating factors are the ones that have been discussed in the section giving a historical review of the initiatives in Maharashtra. All these initiatives provide a fertile ground for initiating a campaign. This is the ground work that has been done by various organisations in Maharashtra.

## **Chapter 2**

### **Legal Spaces**

Land and especially arable/agricultural land is a key resource for more than 70% of India's people. Apart from basic subsistence, it enables the pursuit of other activities that collectively sustain their livelihoods. Secondly land relations between people have a symbolic significance determining the status of persons (Rao 2001). Thus it has direct consequence for a person's livelihood both in terms of material and symbolic status.

This chapter especially focuses on and examines women's rights of access to and management of land and other natural resources. These are mainly determined by two areas of law: general civil law (property, family and succession law) on the one hand, and agrarian and natural resource law on the other. For instance, even where land legislation per se is gender neutral, women's land rights may be curtailed by discriminatory norms of family law (e.g. restricting the legal capacity of married women to administer property) and of succession law (especially where land sales are rare and inheritance is the primary form of land acquisition). Within natural resource legislation, particular attention is devoted here to land law, both because rights to other natural resources (e.g. water) may depend upon land rights, and because land legislation usually affects women's rights more directly (while other natural resource legislation rarely contains gender related provisions).

Rights to natural resources are extremely important for rural women. First, women's livelihoods crucially depend upon them, especially in developing countries. Second, the nature and extent of these rights affect women's bargaining power within the household (*vis-à-vis* husbands and male family members), as well as in the community and society at large. Thus, while land reform programmes adopting the household as the beneficiary unit and issuing land titles to the (male) household head may still provide female household members with access to land, they may undermine their bargaining power (and thus their social position).

Before starting the analysis, two preliminary observations need to be made. First, in view of the researches done in this area in different countries and in different states, it must be remembered that the nature and content of these rights may vary considerably across countries and regions (e.g. individual freehold property, use rights in state-owned land and legally recognized customary rights). The focus here is on whether these rights, whatever their nature and content, are differentiated on the basis of sex/gender. Second, even where formal legislation is gender neutral, women may be prevented from acquiring and enjoying natural resource rights by socio-cultural practices. Therefore, data e.g. on the share of land titles held by women would provide helpful insights on the rights really enjoyed by women. However, systematic collections of this kind of data are extremely rare. This difficulty may limit the effectiveness of this study in analysing the natural resource rights actually enjoyed by women in Maharashtra.

### **Relevant international law**

At the international level, provisions concerning women's rights to natural resources are embodied in human rights law, in international environmental law and in soft-law instruments.

Under international human rights law, women have a right to own and administer property without discrimination (UDHR; arts. 2 and 17, CEDAW, art. 15), and to an “equal treatment in land and agrarian reform” (CEDAW, art. 14(2)(g)). Within the family, both spouses have equal rights in the “ownership, acquisition, management, administration, enjoyment and disposition of property” (CEDAW, art. 16). Women’s water rights are protected by article 14(2)(h) of the CEDAW (right to adequate living conditions, including in relation to water supply); rights to potable water are also linked to the right to adequate food recognized, without discrimination, in article 25 of the UDHR and article 11 of the ICESCR.

Soft-law instruments have been adopted by the human rights bodies of the United Nations. For instance, Resolution 15 (1998) of the Sub-Commission on the Promotion and Protection of Human Rights (entitled “Women and the Right to Land, Property and Adequate Housing”) stated that discrimination against women with respect to acquiring and securing land constitutes a violation of human rights law, and urged governments to amend and/or repeal discriminatory laws and policies and to encourage the transformation of discriminatory customs and traditions (paras. 1 and 3).

As for international environmental law, the preamble of the Convention on Biological Diversity recognises women’s “vital role” in the conservation and sustainable use of biodiversity, and affirms the “need” for their participation in policies concerning these issues (para. 13). Gender-specific provisions are also embodied in the 1994 Convention to Combat Desertification, which provides for the facilitation of women’s participation in efforts to combat desertification at all levels, and specifically for their effective participation in national action programmes and as an instrument for capacity building (arts. 5, 10 and 19). Women’s participation in national action programmes is also required by article 8 of the Regional Implementation Annex for Africa. The annexes for Asia, Latin America and the Northern Mediterranean do not specifically mention women, although articles 4 and 5 respectively refer to article 10 of the Convention (which envisages women’s participation in national action programmes).

Among Rio soft-law instruments, principle 20 of the Rio Declaration states that “women have a vital role in environmental management and development” and that “their full participation is therefore essential to achieve sustainable development”. The Non-Legally Binding Authoritative Statement of Principles on Forests calls for women’s participation in the planning, development and implementation of national forest policies and in the management, conservation and sustainable development of forests (principles 2(d) and 5(b)). Moreover, Chapter 24 of Agenda 21 is specifically devoted to gender.

Women’s rights to natural resources have also been addressed in soft-law documents adopted by other international conferences. The Beijing Platform for Action envisages legislative and administrative reforms to ensure gender equality in access to natural resources, including inheritance and ownership rights (para. 61(b)). Similarly, the World Food Summit Plan of Action affirms the objective of ensuring gender equality and women empowerment (objective 1.3) and envisages measures to enhance women’s access to natural resources (para. 16)

## **Indian women’s struggle for legal rights**

It is generally said that Indian women had it easy when it came to ‘universal franchise’. Like in many other advanced and western societies, in India women didn’t have to fight for equal

political/franchise rights. The founding fathers of the Indian constitution were qualified as liberal and as possessing enough far sight to consider women as equal to men and therefore granting them rights at par with the men. Even today the judiciary does not stop from re-calling the liberal and gender neutral stand of the constitution. For instance as one of the judges notes: "Indian Constitution has a substantially elaborate framework to ensure equality amongst its citizens. It not only guarantees equality to all persons, under Article 14 as a fundamental right, but also expands on this in the subsequent Articles, to make room for affirmative action and positive discrimination." Through the provisions of such acts the claims of all the vulnerable groups (women, children, older persons, and backward classes) are seen as justified however the fact still remains that these rights are continuously denied in practice.

However one is puzzled that if women were seen as independent individuals who called for separate rights why were they not treated as same in their capacity as members of the family unit. It is hard to reckon with when women are allowed to function and assert their rights and claims at the macro level of the nation why at the level of family and community must their rights be limited. Or is it that while women could lead their struggles at the national level and *allowed* assertion of broader rights and claims, at the micro-level they had to lead their own struggles. And yet women have always been part of struggles- be it at the national level for the country's freedom or at the state and even more deeper grass root level, both for their own as well as for other citizens' rights. And yet historical stock-taking shows after so many years of independence, the vulnerable sections of the country though endowed with ornamental political rights continued to be denied access to those economic rights that would challenge the hegemony of the stakeholders; rights that would alter the resource distribution and management remained therefore intact in the hands of those who had controlled it earlier. And even though acts and provisions were enacted to change the situation, in reality and on the ground, not much changed. Similarly the fate of our women also remained largely unchanged. In this chapter we therefore begin by looking at the legal changes that were initiated and brought about and have been amended for women to justify their status as equal citizens of the state. And so we begin by asking the question how has the question and issue of land rights been appropriated for and by the women?

Land can devolve on women either by inheritance which is normally governed by personal laws or through the instrumentality of the state through conscious policies of tenancy land reform and/or distribution of land. As far as agricultural land is concerned since the Government of India act 1935 women's inheritance rights in agricultural land have depended on provincial legislation. Subsequently after independence different states have enacted their own laws governing tenancy and land reform. Consequently there is often a variation between the manner in which land held under tenancy devolves and the prescription under personal laws. The variations are often an *indicator* of the social reality in each state.

There has since independence been a dichotomy between recognition of women's rights over property and women's rights to land as a productive resource. The emphasis on the former aspect has generally emanated from reports, plans and documents focusing on the reforms. The committee on the status of women in India 1974 was perhaps the first document that examined the position of women in the various personal laws but also stated that "no substantial improvement in the condition of women agricultural workers is possible without effective steps to redistribute land." The committee also pointed out the futility of dealing with the problem of rural poverty without dealing with the issue of land reforms.

The findings, analysis and recommendations of the national perspective plan for women (1988-2000) were a catalyst and turning point in the public discourse on women and land. It indicated the crucial question in the field of land reforms is how rural poor women should get land and have access to land. Considering that implementation of land reform measures leaves much to be desired there is an urgent need for people's participation more specifically of the women by promoting their group organizations and through panchayati raj institutions. It also specifically introduced the discourse of women's empowerment relating mainly to their access to the means of production and control over their fruits of labor .

Now our research is limited to the state of Maharashtra. It is designed to evaluate the legal spaces made available and used by women in the state to make claims on land and other immovable property. For this purpose we look at both the central and state level legislations pertaining to all groups of women like, Hindu, Muslim, Parsis, Christians and tribal which affects the women in the state. Since large number of customary codes and personal laws govern many of them they have also been examined (wherever access has been had of the same) for the purpose. However, this has not been easy and there have been limitations on our part due to the time constraint and given the fact that along with many other personal rights, in the matter of property rights too the Indian women are highly divided within themselves. Home to diverse religions, till date, India has failed to bring in a uniform civil code. Therefore every religious community continues to be governed by its respective personal laws in several matters – property rights are one of them. In fact even within the different religious groups, there are sub-groups and local customs and norms with their respective property rights. Thus Hindus, Sikhs, Buddhists and Jains are governed by one code of property rights codified only as recently as the year 1956, while Christians are governed by another code and the Muslims have not codified their property rights, neither the Shias nor the Sunnis. Also, the tribal women of various religions and states continue to be governed for their property rights by the customs and norms of their tribes. To complicate it further, under the Indian Constitution, both the central and the state governments are competent to enact laws on matters of succession and hence the states can, and some have, enacted their own variations of property laws within each personal law. There is therefore no single body of property rights of Indian women. The property rights of the Indian woman get determined depending on which religion and religious school she follows, if she is married or unmarried, which part of the country she comes from, if she is a tribal or non-tribal and so on and at most of the times there are huge overlapping of these categories..

Therefore laws governing the inheritance of landed property form a collage across the legal map of India. On the other hand the women's movement in the early decades of the 20<sup>th</sup> century saw an intensification of pressure for changes in women's legal status from a number of quarters, especially women's organizations and progressive male reformers. By 1930 several women's organizations had been founded most notably the Women's Indian Association, the All India Women's conference and the National council for women in India. These organizations then, as their new avatars in the contemporary times, work for the social reform legislations, especially on women's rights to divorce, inherit property etc. however the land or property rights as an exclusive area for reform activities and campaign could never be institutionlised by these groups, so as to act as pressure groups on policy makers and change the existing scenario. Even when changes are made how limited are they can be ascertained as we look at the Hindu Succession Act (HSA) below.



## **The Hindu Succession (Amendment) Act 1994 (HSA) and other land legislations**

The HSA was the outcome of the controversial Hindu Code Bill. The historical narrative of which stands canonized both in institutional forum and the popular memory. It was as if Dr. Ambedkar had not challenged the Indian ruling classes enough that he now proposed a Hindu Code Bill, which would sanction those claims for an Indian woman which she was not even seen as to desire: her right to divorce, her absolute right in the family property, and so on. At that time, however it was the Hindu widow who was at the centre of much of this Act. A teleological analysis would tell us that way back in 1937 the Women's Rights to Property act of 1937 sought to give the Hindu widow, who had previously been excluded from inheritance through such heirs as the son, agnatic grandson and agnatic great grandson of her husband, and thereby from all rights to intestate succession equal to a son's share in separate property among the Mitakshara system, and to all property under the Dayabhaga system. Cut to our times the act now claims to address all categories of women- the widow, the mother, the sister and mainly the daughter. The act now says that, in a joint Hindu family the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have same rights on the property if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities. The amendment is based on the 174th Report of the Law Commission and largely motivated to address and finally give Hindu women equal rights in the Mitakshara Joint Family Property. However, inspite of the noble desires, much remains to be done as we shall see below that the sections which have been newly inserted and those old ones which still continue to go against the noble concerns of the policy-makers and allow gender bias as previously seen if not more draconian given it is an amendment of a liberal democratic country of the 21st century.

In the case of Maharashtra, it is the Mitakshara system/code of inheritance that prevails. Way before a central bill of amendment was drafted the state of Maharashtra had already come out with a similar bill whereby it sought to balance the injustice meted out to women in the form of the existing HSA. The state amendment was brought about in 1994. In the central bill much of the same has been incorporated and even the final act is largely similar to the state's projections on the same. This was brought about in 2005. Since we now have a central amendment which is largely based on the state bill the formers' contributions and shortcomings can be seen to be that also of the state bill which now stands to be an act.

In the amendment cleared by the Union Cabinet we see that the legislators had proposed and have now made the daughter also a coparcener in the Joint Family Property. As mentioned earlier the same has been proposed and passed previously by some states like Karnataka, Andhra Pradesh, Maharashtra and Tamilnadu - previously, where the daughter was recognized as a member (coparcener) of the joint family while other states like Kerela have completely abolished the joint family system.

The other Amendment, which was cleared by the Cabinet, was to abolish Section- 23 of the Hindu Succession Act 1956. This provision denies a married daughter the right to residence in an inherited parental home unless she is widowed, deserted or separated from her husband. The section further denies the daughter, who has inherited a house along with a male member of a family from asking for her share of the property if any member of the family resides in the

inherited house, until the male heirs also agreed. However, no such restriction has been placed by the Section 23 on a male heir. Therefore by deleting this section from the amended HSA the daughter is now allowed to reside in her paternal household and can also initiate separation of property without a male veto.

Well though on the face of it, it is a much needed positive action, one wonders that when the proposed amendment(s) is only applicable to those women who are not married at the date of the amendment, can it be called positive at all? As it leaves out a large number of women outside its purview—those married before the act. Such a distinction is devoid of any rationale, leave alone legal and is seen largely as an arbitrary distinction. For our purpose it must be noted that this provision is one of those which have been directly incorporated from the Maharashtra bill and is said to be made on the presumption that women, who are married have already received their share of property in the form of dowry or gifts at the time of their marriage. Now right on the face of it such a basis for disallowing married women from the purview of amended provision has two basic shortcomings. One, it may not be that all women have received substantial dowry which would make their claim in the natal property an outrageous one. Secondly, even if they have received gifts and dowry at the time of their marriage, is it not by default making dowry seeking and giving a necessity, because then what else can women lay their claims on? In the face of gender atrocities this is the least one would want, sanctioning of dowries. Women groups on the other hand also argue that the amount of dowry received can hardly be equated to equal rights in property and in reality this is a device to restrict the number of women, who inherit and to maintain status quo as far as possible.

Further, section 30 of the Hindu Succession Act allows any Hindu to dispose off his property including his share in the Joint Family Property by will. Again this will and has in fact allowed many a women to be disinherited of their share in the joint property easily. Though before the amendment was enacted women's group repeatedly pointed towards limiting the right to will so that it is not unjustly used against women. But the law-makers chose to ignore and kept it enact, claiming that women too had absolute freedom to make wills—well that when her share in the property is both marginal and the several lacunae in law and socio-economic structures together almost make this provision null and void for her! The following is an example.

Section 15 of the Hindu Succession Act which specifies how the self acquired property of a female Hindu will devolve also contains certain discriminatory provisions. It states that in the absence of class I heirs (sons, daughters & husband) the property of a female Hindu will go to her husband's heirs and only if these heirs are not present then will the property devolve upon her mother and father. However, in the absence of the mother and father, the property will again devolve upon the heirs of the father and only if there are no heirs of father will the property devolve upon the heirs of the mother. Thus at each successive stage the women gets to have a raw deal and must learn to accept and live with a secondary status.

Thus these were the primary amendments that the new HSA has come to be recognized with. Which have been hailed by several groups as progressive and positive. But are they really meant to be so, and even if there are meant to be so far do they achieve the goals which they had set out with? Below we see will take a look at the primary recommendations which the women's group came up with at the time when the draft bill was being prepared. It was believed that such a document shall allow the legislators to come up with more effective set of amendments which

will genuinely make a difference to women's property rights and her status within the family and community. The recommendations are as follows:

1. All agricultural land be put at par with other property, abolishing the Mitakshara joint family property.
2. A sub-clause should be inserted in the amended act by which shall allow one to override any gender discriminatory clauses in state-level tenurial laws currently in place.
3. Partially restrict testamentary rights (for e.g. place 1/3rd of the property, which would devolve intestate) while allowing full freedom of will in the rest.
4. Rights of widows/spouses should have precedence over children in all Acts ideally, but to start with land which has been allotted by government with single/joint title, or self acquired property, the spouse should be sole heir. This appears to be a more enforceable proposition than suggesting that upon marriage husband and wife should immediately own all property.

These recommendations are interesting pointers to the whole question of women's land rights. Based as they are on experiences of the various groups which have engaged with women at the grassroot the recommendations shows us that the above are the most commonly used methods and ways by which women are disempowered by their own and in their own circles. First by distinguishing between property as agricultural versus non agricultural, movable versus immovable it creates categories on which women can and can not lay claims upon. These distinctions are then justified on the basis of danger of family property being fragmented and what constitutes the core family etc. Thus even if a woman is granted a right upon family property, in her case the family property does not constitute the whole of what is indeed family property but only a few sub-sets therein. Secondly by disallowing her right on agricultural land women have been penalized not once but again and again. Given that large number of male members from agricultural families migrate to urban areas for industrial work; leaving behind women, children and elderly the onus of looking after the land largely falls upon the women. In such a case where a woman has no real claims upon these lands disallows her from taking necessary decisions and many a times becomes a pretext of cheating poor families of their rightful claims.

The second recommendation draws our attention to the many regional variances pertaining to land rights throughout the country and how it has led to women's exclusion from landed property. For instance even in the case of the new amended HSA, limited as it may be, even these small corrections would stand null and void in the face and existence of other regional socio-legal customs and codes and women will continue to be denied their right in landed property. This has been brought to the fore in several studies conducted on women at the grass root levels and that's why women's group have felt that in the absence of a universal code at least such a provision becomes important that nullify regional geographical gender discriminatory codes and customs.

So far much of the property that one has been referring to has been non-agricultural one. In a country where a vast majority of women from the low strata can only possibly make claims to agricultural or farm lands, this category of 'property' becomes essential to reckon with. Therefore if not the, at least one of the most important sections, is Section 4 (2). This section has

been used to deny property rights to women in agricultural land, as Section 4 (2) of the Hindu Succession Act, allows for State legislation to prevail over the Hindu Succession Act. This Section states that the Act shall not apply to laws “providing for the prevention of fragmentation of agricultural holdings or for fixation of ceilings or for the devolution of tenancy rights in respect of such holdings”. Judgments under this Section have upheld laws under Section 4 (2) of the Hindu Succession Act and have mostly denied women equal rights in agricultural land. While some courts have held that the Hindu Succession Act will apply to agricultural holding, this can only be in the absence of State laws for the purposes mentioned in Section 4 (2) or if the States laws under Section 4(2) themselves apply the Hindu Succession Act or personal laws to “devolution of tenancy rights”. In the case of Maharashtra the relevant section are found in the Maharashtra Land Revenue Code Bill and the Bombay Tenancy and Agricultural Lands Act, 1948. Though the latter has been amended to allow the widow of the owner of the property, which has been lent out to tenants, some safeguards. For instance as per Sec 32(G) of the act the tenet is allowed to take over the property or the owners land , condition to fulfilling some pre-given conditions. But if the owner dies and subsequently it is his widow who comes in possession of the property or the property belongs to a widow then the land or the property can not be taken over by the tenet. It is assumed here that a property in her possession without the fear of claims from another would act as a shield against financial threats. However, it must be noted that in case the widow wishes to dispose or sell off the property there are limitations towards it, seriously going against the view of absolute claims over ones property. It must be noted that earlier women and widows were given only a limited estate over the property of her deceased husband, though now per se this clause stands deleted in such forms, as enlisted right now, in practice it still continues to be present.

The other Act that has implications on women’s rights is The Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947. This act prohibits any fragmentation of land beyond a certain limit which would be determined by stated authorities (see Section 5 of the act). So property shares will have to abide by this act. The social implication of this often for women is that they are forced to write away their share in the property for the welfare of their brothers. Often they are not even compensated in cash terms for the share that they lose out on.

And lastly the right to will is the final and the most powerful weapon for those who want to keep women out of family property and keep them deprived of land and property. It is that weapon which can be used when all others weapons and tactics fail to do the above.

We see that none of these recommendations were incorporated in the amended HSA. Neither was their open dialogue whereby each group, the legislators and the women’s group were given a opportunity to dialogue and reason out the insertions and deletions. When so called empowered women are denied their right to participate as active citizens what can one expect in the silent backwaters/lands of rural India. Will these women ever be heard?

## **Muslim women’s rights**

This is largely the scene of Hindu women and her right or delimits to the exercise of her land rights. We now proceed to take a look at how land rights are attributed to Muslim women in the state. Indian Muslims broadly belong to two schools of thought in Islamic Law: the Sunnite and the Shiite. Under the Sunnite School (which is the majority and therefore largely practiced) there are four sub categories;

Hanafis, Shafis, Malikis and Hanbalis. The vast majority of Muslims in India are Hanafis. The Shiites are divided into a large number of sub schools, the two most important of which, in the case of India, are Ismailis and the Ithna Asharis, but they form a smaller section of the Indian Muslim population than those of the Sunni sect. Till 1937 Muslims in India were governed by customary law which was highly unjust. After the Shariat Act of 1937 Muslims in India came to be governed in their personal matters, including property rights, by Muslim personal law as it “restored” *personal law in preference to custom*. However this did not mean either “reform” or “codification” of Muslim law and till date both these have been resisted by the patriarchal forces in the name of religion (Pandey 2003).

Broadly the Islamic inheritance is based on three key features, which are in contrast to the Hindu inheritance codes:

1. The Koran gives specific shares to certain individuals
2. The residue goes to the agnatic heirs and failing them to uterine heirs and
3. Bequests are limited to one-third of the estate, i.e., maximum one-third share in the property can be willed away by the owner.

That is, unlike under the HSA certain groups or sub-groups (which in practice generally constitute of women) can not be arbitrarily excluded nor the same can be done through the provision of the absolute right to *will*.

The main principles of Islamic inheritance law which mark an advance vis-à-vis the pre-Islamic law of inheritance, which have significant bearing on the property rights of women, are:

1. The husband or wife was made an heir
2. Females and cognates were made competent to inherit
3. Parents and ascendants were given the right to inherit even when there were male descendants and
4. As a general rule, a female was given one half the share of a male.

The newly created heirs were mostly females; but where a female is equal to the customary heir in proximity to the deceased, the Islamic law gives her half the share of a male. For example, if a daughter co-exists with the son, or a sister with a brother, the female gets one share and the male two shares.

The following 12 heirs constitute Class I heirs (Koranic Heirs):

(a) Heirs by Affinity - Husband and Wife

(b) Blood Relations - Father, True Grandfather (howsoever high), Mother, True Grandmother (howsoever high), Daughter, Son's Daughter (howsoever low), Full sister, consanguine sister, uterine brother, and uterine sister. Therefore while qualitatively women find larger representation under the Muslim law in terms of concrete and quantitative shareholding they are discriminated against their male counterparts.

## **Property rights through marriage**

The Supreme Court of India has laid down, that the *mahr* (dower) ranks as a debt and the widow is entitled, along with the other creditors of her deceased husband, to have it satisfied out of his estate. That is, through her right, she is not entitled to a charge on the husband's property unless there be an agreement. The Supreme Court has laid down that the widow has no priority over other creditors, but that *mahr* as debt has priority over the other heir's claims. This right is known as the widow's right of retention.

## **Will**

There is a provision against destitution of the family members in the Islamic law in that it is clearly provided that a Muslim cannot bequeath more than one third of his property. However if he registers his existing marriage under the provisions of the Special Marriage Act, 1954 he has all the powers of a testator under the Indian Succession Act, 1925.

## **Christians and Parsi women**

The laws of succession for Christians and Parsis are laid down in the Indian Succession Act, 1925 (ISA). Sections 31 to 49 deal with Christian Succession and Sections 50 to 56 deals with Succession for Parsis (Pandey 2003; Singh). Prima facie the property rights of the Parsis are quite gender just. Basically, a Parsi widow and all her children, both sons and daughters, irrespective of their marital status, get equal shares in the property of the intestate while each parent, both father and mother, get half of the share of each child. However, on a closer look there are inherent discriminations: for example, a widow of a predeceased son who died issueless gets no share at all. The Indian Christian widow's right is not an exclusive right and gets curtailed as the other heirs step in. Only if the intestate has left none who are of kindred to him, the whole of his property would belong to his widow. Where the intestate has left a widow and any lineal descendants, one third of his property devolves to his widow and the remaining two thirds go to his lineal descendants. If he has left no lineal descendants but has left persons who are kindred to him, one half of his property devolves to his widow and the remaining half goes to those who are of kindred to him. Another anomaly is a peculiar feature that the widow of a predeceased son gets no share, but the children whether born or in the womb at the time of the death would be entitled to equal shares. Again we see women are made dependent on the rest of the family and her children.

Now if one were to make a quick evaluation of the above laws and customs what would one notice, which makes the case of women and land rights unique? Almost, if not all of the above, talk of women's right to property and land in the condition of inheritance, that is when the 'real' owner dies that too without a will. Thus these rights, as the condition implies, are very limited, as they would apply in such and such condition only. What happens in the lifetime of the real owner surviving, in the lifetime of both the women and the person's whose property she would later lay claims on? What is the scene pertaining to her rights in the absence of death? Is she supposed to wait till the final time comes and then begin to act as a person who could claim property and from then take on subsequent action to use and utilize her resources? This while in her lifetime, given the fast changing scenario under labor migration where women are more and more acting if not sole but as equal bread winners?

## **Tribal (women's) land rights**

Moreover, while we can say so through our examination of the main canons of law in the case of women differentiated by religion and region this still leaves out a vast chunk of women like tribal women who are governed by customary practices and other state laws like the Indian Forest Act etc, which has come to affect their livelihood in a gross way, out of the present purview.

In the history of tribal women's land rights the case of October 1996 is an important one. A mass meeting of adivasi representatives was organized in Ranchi. It was a protest meeting against a supreme court judgment which where they felt that the supreme court's earlier judgment in the case of determining the right of tribal women's right over the family/community land was an attempt to create divisions in their society by initiating a discussion on individual rights (whether male or female) counter to their claim to community rights. They felt that women had better position, respect and autonomy in adivasi society, than in any other. So the issue of women's rights could not be examined separate from the overall social context. Similar concerns were voiced across the country by the various tribal communities and organizations.

Resources among the tribals are not considered by them as wealth but rather as a means of livelihood. So by demanding rights in parental property not only would bonds of love be broken but lands would pass into the hands of the wealthy, those with resources. So while the adivasi leaders are now willing to consider joint titles in marital property, they continue to oppose the issue of women's rights to inherit land as daughters and sisters. But if land fragmentation and usurpation by wealthy landowners is the prime concern should not division of the same be stopped even when only men are involved, say in the case of brothers. Will they be asked to hold the ancestral property as a joint possession?

In the case of tribal lands the land acquisition act is considered the most important influencing factor and also the most draconian which has been further modified to render it proof against all human interests. Why should there be a bill that permits a state to acquire people's lands when the state has never had a history of providing these people with any benefits.(Das 2001). Through the impositions of this act the government in the name of preserving forest areas moves into tribal lands and acquires their property. The compensation against these lands are minimal and even in that case they remain as promises. The unique workings of the government machinery assures that tribals rarely get to lay claims on it and even when they acquire it it is so cut off from their current area of residence that to make a livelihood out of it is next to impossible.

## **The way forward: overall recommendations**

1. **Need for a political approach to the struggle:** It goes without saying that unless there is a mass mobilisation around this issue and that it is raised as a political issue, it would not be heard in the manner that it needs to be. Recognising that for any political campaign to succeed, support in small ways is essential; NGOs and research agencies do have a role to play. However this role cannot gloss over the role of mass movements. Different women's organisations and other progressive groups need to build on their diversities and build a campaign on resource rights for women. As we have seen in the earlier

discussions, diversity in terms of caste, class, religion and ethnicity needs to be recognised before a strategy could be devised. Here the role of what we have marked out as Sanghatanas becomes critical. Different political parties will have to be forced to bring this topic on their agenda, but for this the mass base will have to be strengthened and awareness around this issue be built. Various organisations such as the research centres, support organisations, counselling centres will have to play a major role to bring in visibility to the question. Here it is important to understand that single cause collectives may not work effectively. There is a need to work through the existing networks that are active in Maharashtra whether they are women and water networks, women and violence or long standing networks such as the Sampark Samiti and also organisations of the diverse groups of women.

2. **Need for a grounded action research:** This short desk study only underscores the need for launching a more grounded action research programme. Here we not only need to understand the different dimensions of the problem at the grassroots, but also need a theoretical understanding of the legal aspects of the question. Collaborative efforts between legal organisations and women's rights groups therefore becomes critical. For example, the different laws around natural resources impinge heavily on women's rights over resources. These will have to be studied thoroughly before proposing a legal recommendation. But this study cannot be isolated from ground realities of how rights play out in the present situations. Hence grounded studies become critical in this respect.
3. **Linking the resource development schemes to the campaign:** Using the WUAs or the watershed based programmes and schemes to further the agenda of women's titles. Just like the land ceiling act provided an incentive for men to transfer part of the land in the name of women, large scale resource development schemes should also be identified and studied to see the spaces where such conditionalities could be imposed.
4. **From ownership to access and management:** We have looked at the land rights canvas from the national to the state level. We have also seen it specifically in the context of women. Given the larger context of globalization and increasing number of people being deprived of their lands as a result of new industries or land put to non agricultural uses, it becomes important to look at approaches that go beyond making a demand for land alone. We have also seen figures indicating increasing landlessness which is up to 40% at the national level and about 38% at the State level. In this kind of a scenario where land ownership itself is rapidly receding, we need to consider a basket of approaches, which range from land redistribution, improving women's individual rights over land to approaches that centre on rights over other resources such as water and access to land through leasing arrangements for e.g. In the tribal context apart from rights over the forestland, what is important also is the right over the produce. In fishing communities right over water for fishing becomes critical. These are all livelihood resources and improved access to men and women becomes a crucial agenda to pursue. Perhaps a need for a shift from ownership to access and management may be crucial in the given contexts. However, this should not gloss over the issue of redistribution and equity and justice.



5. **Using independent entitlements over water as an entry point:** For long, water has been recognized as an important productive resource, which changes the value of land. However, until recently water rights were seen as crucial only through their association with land rights. However, of late due to some pioneering work done in Maharashtra, independent rights to water have acquired significance. Here the work of *Pani Panchayat* mentioned earlier in the historical review and further developed by *Mukti Sangharsh Chalwal* is very significant. Both these initiatives have shown that access to minimum water irrespective of land holding can expand the livelihood options of a household. Every household had access to water to irrigate upto 2.5 acres of land. *Mukti Sangharsh* movement developed this idea further and made this into an organizing principle. They conducted detailed experiments along with pro-people scientists and developed norms of minimum assured water requirement on a per capita basis. This principle has important implications so far as access to livelihood resources is concerned. Firstly it allows the poor, landless and the women to sell their water right as a last resort option. It opens up avenues for share cropping on better terms for these groups and thirdly and what has been tried in Khudawadi village of Osmanabad, it allows for leasing in land by the landless and the poor either from the common lands or from private land owners. In Khudawadi where a water users association situated at the tail end of a distributary went so far as to resolve that up to 15% of the water they received would be available for the landless and women's groups. One such group that was formed also successfully negotiated a medium-term produce sharing arrangement with owners of a wasteland tract and has since been able to develop the land and plant trees on it and extract fodder from it. In fact, there are many such arrangements that have emerged, and in the absence of a comprehensive strategy and continuity, have also lapsed. In Tandulwadi, for example, for a couple of years water was provided to women's groups for both raising of nurseries and selling saplings, as well as for small scale vegetable cultivation.

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